

INSURANCE

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Nebraska Health Care Prompt Payment Act

The Health Care Prompt Payment Act, Neb.Rev.Stat. §§44-8001 through 44-8010, sets the standards for the prompt payment of claims to health care providers by insurers. Under the act, insurers must pay interest on clean claims that are not paid within the time limits set forth under the law, unless the insurer has filed a valid “prompt payment act compliance statement” with the Nebraska Department of Insurance by December 1 of each year.

Insurers that choose to file prompt payment compliance statements are advised that in the event of an investigation of insurer claims settlement practices, either as part of a formal market conduct examination or as part of an investigation conducted pursuant to the act, the Department will look to verify the prompt payment act compliance statement is valid.

Several insurers have asked the Department for guidance about the nature and contents of the prompt payment act compliance statement. The Department issued bulletin, CB-108, which responds to that request, by providing an example statement that will comply with the requirements of the Act.

A copy of CB-108 may be obtained from the Department’s website at <http://www.doi.ne.gov/bulletin/cb108.pdf>. The statement set forth in the bulletin is an example of a valid prompt payment act compliance statement. The example is a non-exclusive illustration that insurers may follow to file a valid prompt payment act compliance statement.

Questions concerning CB-108 may be directed to the Life and Health Division at lifehealth@doi.state.ne.us.

CONSUMER AFFAIRS DIVISION

Comparative Negligence

Though we are unable to dictate the degree of responsibility to be assigned to each driver, the Consumer Affairs Division investigates comparative negligence complaints to ensure proper claims settlement practices.

Consumers regularly contact our division with concerns relating to comparative negligence determinations. Often, these complaints involve auto accidents where the other party disregarded traffic signals and was cited for a violation, but the claimant is assigned a significant percentage of responsibility.

Though we are unable to dictate the degree of responsibility to be assigned to each driver, the Consumer Affairs Division investigates comparative negligence complaints to ensure proper claims settlement practices. We initiate reviews to verify procedures are consistent with Nebraska Administrative Rules and Regulations, Title 210, Chapter 60, which states, "Insurers shall not assign a percentage of negligence to a claimant for the purpose of reducing a settlement when there exists no reasonable evidence upon which the assigned percentage of negligence could be based."

Chapter 60 states, "Insurers shall not assign a percentage of negligence to a claimant for the purpose of reducing a settlement when there exists no reasonable evidence upon which the assigned percentage of negligence could be based."

Following are some examples of information that may be requested in our review of comparative negligence complaints:

- Justification for the percentage of responsibility assigned the claimant;
- Adjuster's notes;
- Police reports and disposition of citations issued;
- Complete recorded statements from the parties involved in the accident;
- Witnesses' statements;
- Photos, if necessary;
- Results of any scene investigations; and
- Traffic signal timing and sequence report.

We will not request all of these items with every investigation. In each case; however, we will ask for sufficient information to show that the company carefully considered the facts and circumstances of the individual claim before apportioning fault.

We will ask for sufficient information to show that the company carefully considered the facts and circumstances of the individual claim before apportioning fault.

Additional questions concerning comparative negligence complaints may be directed to the Consumer Affairs Division at 402-471-2201.

FRAUD DIVISION

Fraud Charges Filed Against Owner of Viking Glass

A joint investigation resulted in ten insurance fraud charges being filed against James Almond III, 40, owner of Viking Glass in Omaha.

A joint investigation by the Department of Insurance Fraud Prevention Division and the Attorney General's office resulted in ten insurance fraud charges being filed against James Almond III, 40, owner of Viking Glass in Omaha.

The joint investigation found Almond submitted fake invoices for auto glass repair and replacement to ten different property and casualty insurance companies. Between October 2003 and December 2005, Almond submitted 85 fake invoices on behalf of consumers to their insurance companies and third-party administrators. In total, Almond defrauded insurance organizations of \$54,913.29.

In total, Almond defrauded insurance organizations of \$54,913.29.

Almond is charged with eight counts of insurance fraud involving \$1,500 or more and two counts of insurance fraud involving \$500 to \$1,499. Charges involving \$1,500 or more are class III felonies, each punishable by one to 20 years in prison and a \$25,000 fine. Insurance fraud charges involving \$500 to \$1,499 are class IV felonies, each punishable by up to 5 years in prison and a \$10,000 fine.

Additional information may be obtained from the Fraud Prevention Division at fraudprevention@doi.state.ne.us.

PRODUCER LICENSING DIVISION

Clarification to Flood Insurance Bulletin

CB-112 sets forth the minimum flood insurance training requirements for insurance producers.

Some questions have arisen in response to the Department's bulletin, CB-112, dated September 21, 2006. CB-112 sets forth the minimum flood insurance training requirements for insurance producers. The PIA has requested that the Department clarify the following: (1) when will the course have to be completed in relation to a producer's continuing education renewal date, and (2) what will the Department expect for producers who have completed continuing education for January, February, and March renewal dates.

If a producer is currently completing continuing education requirements for a 2007 or 2008 renewal, the producer must complete the course prior to renewal.

Producers who have already earned the required amount of continuing education and whose licenses renew in January, February, and March, will not be required by the Department to have the additional hours for the flood course.

If a producer is currently completing continuing education requirements for a 2007 or 2008 renewal, the producer must complete the course prior to renewal. The Department is in the process of approving flood education courses and will post the approved courses on the Department's website found at www.doi.ne.gov.

Producers who have already earned the required amount of continuing education and whose licenses renew in January, February, and March, will not be required by the Department to have the additional hours for the flood course, but would encourage producers to complete the course as soon as possible for the next continuing education period. The producer should notify the Department when the course has been completed, but the producer would not have to file the Certificate of Completion until he or she submits all certificates before renewal.

Any additional questions may be directed to Bruce Ramge at bramge@doi.state.ne.us.

EXAMINATION DIVISION

Pre-Need Exams Completed During Third Quarter, 2006

Curran Funeral Chapel, Inc.
Meyer Brothers Family Care Funeral Trust, Inc.

Financial Examinations Completed During Third Quarter, 2006

Coventry Health Care of Nebraska, Inc.
Inland Insurance Company
Universal Surety Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

PROPERTY & CASUALTY DIVISION

Accessing and Reviewing Completed Filings

If you come to the Department looking for filings for various companies, please be aware of the procedure for filings that were done through SERFF. The basic information is kept in the actual file, and a complete copy of the filing can be obtained—once final action has been taken—through SERFF, as we make all filings public access.

Our Administrative Services area does an excellent job of keeping the files current, which enables you to come into the Department and review any completed filing. However, if you want to review filings for a number of companies, it would be to your advantage to e-mail a request to officeservices@doi.state.ne.us or send your request via facsimile to Office Services at 402-471-4610. By providing an advanced notice of the list of companies and the types of filings you would like to see, as well as the date and approximate time you would like to review the filings, the files can be pulled and ready for you when you arrive. Except for filings made by advisory organizations, filings are generally not available for public view until final action has been taken.

Retaliatory Filing Fees

Nebraska is a retaliatory state regarding filing fees. When making a filing, our filing fees will be that of the state of domicile of the filing carrier. If you are making a filing in multiple companies, with various states of domicile, we will determine the filing fee for each carrier based on their own state of domicile rather than the state of domicile of the lead company. If an insurer's home state does not charge filing fees to foreign companies, then no filing fees are due here for that insurer.

Status Requests on Filings

When calling for a status request for filings that fall under the File and Use standard, we suggest you wait for approximately 30 days after we receive the filing. We hope to have the majority of filings completed and returned to you within that time frame. If, of course, we have to ask for additional information, or ask that a change be made, additional time will be needed.

To review filings for a number of companies, it would be to your advantage to e-mail a request to officeservices@doi.state.ne.us or send a request via facsimile to Office Services at 402-471-4610.

Except for filings made by advisory organizations, filings are generally not available for public view until final action has been taken.

When making a filing, our filing fees will be that of the state of domicile of the filing carrier.

When calling for a status request for filings that fall under the File and Use standard, we suggest you wait for approximately 30 days after we receive the filing.

Consent-to-Rate can only be allowed for a policy that is written at a rate higher than the rate that is currently on file at the Department.

Consent-to-Rate Filings

Consent-to-Rate filings are allowed for most lines of insurance. The “procedure” can be found in Nebraska statute 44-7508 and section 13 of Department Bulletin CB-50. Consent-to-Rate can only be allowed for a policy that is written at a rate higher than the rate that is currently on file at the Department. We encourage companies to consider this process as it allows a carrier to surcharge a risk for an exposure that is greater than was considered when developing the rates.

Cancellation of Insurance Bulletins Issued

CB-110, “Property Insurance Cancellation.”

This bulletin concerns Neb.Rev.Stat. §44-522 and addresses cancellation requirements for property, marine, and liability insurance. Sixty days’ notice must be given for cancellation of a policy with a term of more than 60 days, while 10 days’ notice must be given for a policy with a term of less than 60 days. If cancellation is for nonpayment of premium, then only 10 days’ notice must be given.

Even if the policy has been in effect for fewer than 60 days, 60 days’ notice must be given before cancellation if the policy has stated dates of longer than 60 days.

Some confusion exists over the meaning of “term of less than 60 days.” A term of less than 60 days is one with stated policy dates of less than 60 days. Even if the policy has been in effect for fewer than 60 days, 60 days’ notice must be given before cancellation if the policy has stated dates of longer than 60 days.

CB-111, “Automobile Cancellation and Billing.”

This bulletin concerns Neb.Rev.Stat. §44-516 and applies to private passenger automobile liability insurance provisions. New policies can be cancelled in the first 60 days with 10 days’ mailed notice. Except for reasons of nonpayment, which is still 10 days’ notice, 30 days’ notice of cancellation is required for private passenger auto liability policies. Mailing may be either registered or certified. A company with cancellation provisions that are more restrictive is required to add appropriate endorsements to comply.

Except for reasons of nonpayment, which is still 10 days’ notice, 30 days’ notice of cancellation is required for private passenger auto liability policies.

All excluded drivers must be shown on a billing statement or policy declarations once a year in lieu of signing driver exclusion forms annually.

Any questions regarding CB-110 or CB-111 may be directed to the Property and Casualty Division at 402-471-2201.

One of the significant changes made to the Rate and Form Act over the past few years is that the Department's prior review of filings is often unnecessary for the insurer to implement them.

Prior approval applies to Mortgage Guaranty, Credit Property and Credit Unemployment because the cost for these is typically passed on to the ultimate consumer by the "master policyholder."

A summary has been created and added to the Department's website, which reflects the lines of insurance that fall under each of the categories.

File and Use/Prior Approval

The Department has made some very significant changes to the Rate and Form Act over the past few years. One noticeable change is that the Department's prior review of filings is often unnecessary for the insurer to implement them. The law has moved from a fairly restrictive prior approval approach to a more user-friendly approach in many areas. There are, however, a few exceptions to the rule. Section 44-7506(1) states:

All rating systems and prospective loss costs shall be filed with the director in accordance with section 44-7508, except that filings for the following shall be filed in accordance with sections 44-7510 and 44-7511:

- (a) Filings made by advisory organizations;*
- (b) Medical professional*
- (c) Insurance in noncompetitive markets as determined pursuant to section 44-7507;*
- (d) Liability and physical damage coverage relating to the rental of private passenger automobiles on a nonfleet basis;*
- (e) Insurance written by joint underwriting pools or joint reinsurance pools;*
- (f) Insurance written in an assigned risk plan; and*
- (g) Insurance covering risks of a personal nature written for business entities if the cost for the insurance is charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.*

Sub-lines (a) through (f) seem to be fairly clear and cause few questions, however, we do see confusion in sub-line (g). Prior approval applies to Mortgage Guaranty, Credit Property and Credit Unemployment because the cost for these is typically passed on to the ultimate consumer by the "master policyholder."

A summary has been created and added to the Department's website at <http://www.doi.ne.gov/pc/guidelin.htm>, which reflects the lines of insurance that fall under each of the categories.

Any additional questions may be directed to the Property/Casualty Division at 402-471-2201.

LEGAL DIVISION

Supreme Court Cases

Didier v. Ash Grove Cement Co., 272 Neb. 28

On March 19, 1997, Darryl Didier, an employee of Electric Company of Omaha (ECO), was injured when he fell from a roof while performing work at Ash Grove's Louisville facility. Electric Company of Omaha was relocating a cable tray as an independent contractor for Ash Grove. Didier filed a negligence action against Ash Grove to recover damages for injuries he sustained in the fall. ECO was joined as a "third party plaintiff" to protect its interest with respect to Didier's worker's compensation claim.

Under Mine Safety and Health Administration (MSHA) regulations, an employer of an independent contractor is not liable for the physical harm to another caused by the actions and omissions of the contractor. However, a third party can be held liable for the injuries of the independent contractor's employees if (1) the third party retains control over the work or (2) the third party has a non-delegable duty to protect another from harm. The court has held that a non-delegable duty exists where the third party fails to provide a safe place to work or there is a "peculiar unreasonable risk" of harm. In this case, the ECO employees were required to report to the office when arriving at the Ash Grove site, but there was no supervision or oversight of the work. ECO's standard practice was to use its own safety equipment. The district court granted Ash Grove's motion for summary judgment, holding that Ash Grove did not retain control over the work, nor did it owe any non-delegable duty to protect another from harm.

The Nebraska Circuit Court of Appeals overturned the district court's holding, ruling that there was a genuine issue of material fact as to whether Occupational Safety and Health Administration (OSHA) or MSHA regulations apply. However, the Nebraska Supreme Court reversed the Circuit Court of Appeals, holding that MSHA regulations applied. Further, the Court concluded that Ash Grove did not breach any its non-delegable duties to provide a safe place to work or protect against "peculiar unreasonable risk" or its non-delegable duty arising from its control over the premises.

Bronsen v. Dawes County, 272 Neb. 320

In July 2002, Carolyn Bronsen broke her ankle when she stepped in a hole in the Dawes County courthouse lawn while attending the Fur Trade Days celebration. Bronsen sued Dawes County and Fur Trade Days, Inc. (FTD) for negligence in failing to ensure the safety of the grounds or to provide adequate warning of danger. The court concluded that Dawes County and FTD qualified as owners and that Bronsen was using the lawn for a recreational purpose under Nebraska's Recreation Liability Act (RLA), Neb.Rev.Stat. §§37-729 to 37-736. Under the RLA, owners of

property do not have a duty of care to persons using the land for recreational purposes. The district court granted defendants' motion for summary judgment, and Dawes County and FTD were not held liable for Bronsen's injury.

The issue on appeal is whether governmental entities are protected as owners under the RLA. The Nebraska Supreme Court, in reversing the decision with respect to Dawes County, held that Nebraska's RLA applies only to private landowners, and governmental entities are not protected under the RLA. The Court remanded the case to the district court to hear Bronsen's claim for negligence against Dawes County, but did not disrupt the decision on the claim against FTD.

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1586 First Landmark Life Insurance Company Wilmington, DE	Violated <u>Neb.Rev.Stat.</u> §§44-2132 & 44-2143(3). Failed to timely file Form B filing.	Consent Order \$1,500 admin. fine 8/24/06
C-1590 Vesta Fire Insurance Corporation Birmingham, AL	Company placed in liquidation in domiciled state.	Order Certificate of Authority revoked 8/16/06
C-1591 Vesta Insurance Corporation Birmingham, AL	Company placed in liquidation in domiciled state.	Order Certificate of Authority revoked 8/16/06
C-1592 Shelby Casualty Insurance Company Birmingham, AL	Company placed in liquidation in domiciled state.	Order Certificate of Authority revoked 8/16/06
C-1593 Shelby Insurance Company Birmingham, AL	Company placed in liquidation in domiciled state.	Order Certificate of Authority revoked 8/16/06
C-1588 APS Healthcare of Bethesda, Inc. Silver Spring, MD	Violated <u>Neb.Rev.Stat.</u> §44-1525(11). Failed to respond to Department inquiry within 15 business days.	Consent Order \$500 admin. fine 10/12/06

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1668 Cristina Gonzalez Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(d) & (h). Improperly withheld, misappropriated or converted money; used fraudulent, coercive or dishonest practices.	Order Producer license revoked 8/31/06
A-1673 Automobile Protection Corporation-APCO & John Lee Norcross, GA	Violated <u>Neb.Rev.Stat.</u> §44-4065(1). Failed to report administrative action taken in another jurisdiction within 30 days.	Consent Order \$1,000 admin. fine; John Lee dismissed from the action 8/25/06
A-1674 Cory J. Adams Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h) and 44-4054(8). Violated any insurance law; used fraudulent, coercive or dishonest practices; and failed to change address within 30 days.	Consent Order \$1,000 admin. fine 8/24/06
A-1675 William C. Steckis Elkhorn, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(1)(a) & (f), 44-1525(2) and Title 210 NAC Ch. 46 §020.2 (B). Misrepresented policy to induce sale, lapse, etc., or misquoted premium; used deceptive or misleading advertisements; used high pressure tactics.	Consent Order \$1,000 admin. fine 8/22/06
A-1676 Carl V. Wyllie Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive or dishonest practices.	Consent Order \$500 admin. fine 8/11/06
A-1680 American Title & Escrow Co. & Nancy J. McDaniel Omaha, NE	Violated <u>Neb. Rev. Stat.</u> §§ 44-361 & 19,111. Provided rebate on insurance product; provided rebate on title insurance policy.	Consent Order \$1,000 admin. fine 9/27/06
A-1682 Gene Boeka Gretna, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h). Violated any insurance law; demonstrated financial irresponsibility.	Order Producer license revoked 10/12/06
A-1683 Benjamin Greiner Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h). Violated any insurance law; demonstrated financial irresponsibility.	Order Producer license revoked 10/12/06

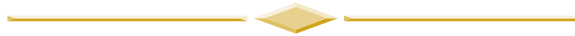
Actions Taken Against Producers (continued)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1684 Cheryll K. Cook Schuyler, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h). Violated any insurance law; demonstrated financial irresponsibility.	Order \$250 admin. fine 10/13/06
A-1686 Harold Elmer Cone Fremont, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(10) & 44-4059(1)(h). Made false statements on application; used fraudulent, coercive or dishonest practices.	Consent Order \$1,000 admin. fine 10/17/06
A-1691 Platte Valley Abstract & Title Company and Joyce A. Low Scottsbluff, NE	Violated <u>Neb.Rev.Stat.</u> §§44-19,116 and 44-19,118. Conditions for providing escrow, security, settlement, or closing services and maintaining escrow and security deposit accounts.	Cease and Desist Order 9/28/06
A-1692 Omaha Title and Escrow, Inc., Samuel L. Cooper & Jill Kussman LaVista, NE	Violated <u>Neb.Rev.Stat.</u> §19,112(3). Failed to file a financial disclosure statement with the department.	Consent Order \$500 admin. fine 10/19/06
A-1694 Platte Valley Escrow Closing Co. and Joyce A. Low Scottsbluff, NE	Violated <u>Neb.Rev.Stat.</u> §§44-19,116 and 44-19,118. Conditions for providing escrow, security, settlement, or closing services and maintaining escrow and security deposit accounts.	Cease and Desist Order 10/6/06



Department Calendar

November 10:	DOI Closed - Veteran's Day Observed
November 23-24:	DOI Closed - Thanksgiving
December 25:	DOI Closed - Christmas Day
January 1:	DOI Closed - New Year's Day
January 15:	DOI Closed - Martin Luther King Day



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